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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,092	01/13/2006	Michel Garnier	0517-1053	2418

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EXAMINER

LUONG, VINH

ART UNIT	PAPER NUMBER
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3682

MAIL DATE	DELIVERY MODE
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06/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,092

Applicant(s)

GARNIER, MICHEL

Examiner

Vinh T. Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 and 29-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Vinh T. Luong
Primary Examiner

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Attachment.

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1. Applicant's election of species of FIGS. 9-11 in the reply filed on May 10, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse. MPEP § 818.03(a).

2. Claims 23-25 and 29-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 10, 2007.

3. The drawings are objected to because [the drawings are not in compliance with 37 CFR 1.84. See Form PTO-948 attached. For example:

(a) The separated parts in exploded view FIG. 12 should be embraced by a bracket to show the relationship or order of assembly. See 37 CFR 1.84(h)(1);

(b) Each part of the invention, e.g., the radial ribs in Claim 28 and paragraph [0039] of the specification should be designated by a reference character. See 37 CFR 1.84(p) and MPEP 608.01(g);

(c) The hatching used to indicate section portions of an object must be made by regularly spaced oblique parallel lines spaced sufficiently spaced apart to enable the lines to be distinguished without difficulty. 37 CFR 1.84(h)(3). Applicant's hatching in cross-sectional views in FIGS. 3-5, etc. is not made by parallel lines spaced sufficiently apart;

(d) The drawings should show the plane upon which a sectional view such as FIG. 3, 11, 13, or 15 is taken. 37 CFR 1.84(h)(3); and

(e) The view number should be abbreviated as "FIG." instead of "fig." See 37 CFR 1.84(u)(1).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because of the objection above. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed feature(s) such as the

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radial ribs in Claim 28 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

6. The information disclosure statement filed May 6, 2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

7. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

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8. The disclosure is objected to because of the informalities, e.g., (a) the specification should have appropriate headings listed above; and (b) each part of the invention, such as, the radial ribs in claim 28 and paragraph [0039] of the specification should be designated by a reference character. See 37 CFR 1.84(p) and MPEP 608.01(g). Appropriate correction is required.

9. Claims 22 and 26-28 are objected to because of the following informalities: no clear antecedent basis is seen for the terms such as "the latter," "the *front* plate," and "the front part" in Claim 22. Appropriate correction is required.

10. The claims are objected to because they include reference characters, which are not enclosed within parentheses. Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

The reference characters, such as, "a" and "b" to indicate the distances in Claim 22 should have been enclosed within parentheses.

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claim 28 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described

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in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 28 recites "the retention means (38) consist in radial ribs." However, the drawings (FIGS. 9-11) do not show the radial ribs. It is unclear as to how Applicant makes/uses the radial ribs as claimed.

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

14. Claims 22 and 26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. For example, the transitional phrase "consist in" in Claims 26-28 should have been changed to "consists of." See MPEP 2111.03.

The recitation "the plate (2) is secured to the case (3) so that its upper surface extends beneath the pedal pin (4) along a distance a and the support axis (7) of the shoe on the pedal plate (2) which merges with the front plate *passing through the metatarsus of the cyclist's big toe when the latter is pedaling*" in Claim 22 are indefinite because the relationship of the claimed parts, such as, the location of the plate and the pedal pin is not based on an objective standard, but on a subjective standard such as the unspecified build of the toe of a particular cyclist. Whether a particular cycle pedal is covered by the claims or not would depend upon, e.g., the size, shape, and build of the toe of the particular cyclist and the habit of placing the foot on the cycle pedal of

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the particular cyclist. *Ex parte Brummer*, 12 USPQ2d 1653 (Bd. Pat. App. & Inter. 1989) cited in MPEP 2173.05(b).

The meaning of the term “globally” in Claim 22 is unclear.

The term “movable” in Claim 22 is vague and indefinite in the sense that things, which may be done, are not required to be done. For example, the rear interlocking mechanism is movable, *but is not structurally required to be* moved from an interlocked position through an open position under stress from an elastic means. See “discardable” in *Mathis v. Hydro Air Industries*, 1 USPQ2d 1513, 1527 (D.C. Calif. 1986), “crimpable” in *Application of Collier*, 158 USPQ 266 (CCPA 1968), “removable” in *In re Burke Inc.*, 22 USPQ2d 1368, 1372 (D.C. Calif. 1992), and “comparable” in *Ex parte Anderson*, 21 USPQ2d 1241, 1249 (BPAI 1992).

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claim 22, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Giorgio (FR 2 623 769 cited by Applicant).

Giorgio teaches a cycle pedal comprising a pedal body 14 or 20 constituted of a *globally* rectangular horizontal plate 17, 18 or 21 (see Attachment hereinafter “Att.”) fitted on its upper surface with means 19 or 27 for locking a cyclist's shoe and on one of its longitudinal edges, a case 4 containing a pedal pin 7 designed to be fixed to the free end of a crank 1 characterized in that the plate 17, 18 or 21 is secured to the case 4 so that its upper surface extends beneath the pedal pin 7 along a distance E (FIGS. 1 and 2) and the support axis of the shoe (not shown) on the

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pedal plate 17, 18 or 21 which merges with the front plate capable of passing through the metatarsus of the cyclist's big toe when the latter is pedaling, extends in front of the pedal pin 7 along a distance C, D (FIG. 3) so that the pedal support axis 7 describes a circular curve with centre (unnumbered in FIG. 8) and radius (FIG. 8) offset from downward and from forward relative to the circular curve (FIG. 8) of the pedal pin 7 with centre O (FIG. 8 of Att.), where O' (FIG. 8 of Att.) is the axis of the cycle bottom bracket shell and of radius r and in that the means for locking 19 or 27 comprise, on one hand, a front interlocking mechanism 18 (FIG. 3) or unnumbered in FIG. 10 (Att.) designed to co-operate with the front part of a clip integral with the sole of the cyclist's shoe and, on the other hand, a *movable* rear interlocking mechanism 17 (FIG. 3), 27 (FIG. 10) designed to co-operate with the rear part of the clip of the shoe, the *movable* rear interlocking mechanism 17, 27 being *movable* under the pressure of the rear part of the clip of the shoe from a position called interlocked, and passing through an open position allowing to insert or remove the rear part of the clip of the shoe, until returning to the interlocking position under stress from an elastic means.

Claim 22 is anticipated by Giorgio because Giorgio teaches each positively claimed element. The term "a *movable* rear interlocking mechanism" does not positively require the rear interlocking mechanism to be structurally moved, therefore, Giorgio's rear interlocking mechanism "reads on" this term. On the other hand, referring the pedal to the merely inferentially included elements or intended use elements, such as, the metatarsus of the cyclist's big toe and the shoe is not accorded patentable weight. It is well settled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed

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invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

19. Claim 22, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Giorgio in view of Bernard et al. (US Patent No. 4,686,867).

Giorgio teaches the invention substantially as claimed. See the rejection under 35 USC 102(b) above. However, Giorgio does not explicitly teach a bicyclist shoe to engage with the bicycle pedal.

Bernard teaches the bicyclist shoe having a clip 1 integral with a sole 4 in order to engage with the bicycle pedal 2 having a front interlocking mechanism 14 and a *movable* rear interlocking mechanism 18, 19 under stress from an elastic means 26 in order to allow the insertion or removal of the rear part of the clip of the shoe. Bernard, col. 1, line 13+.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Bernard's bicyclist shoe in order to engage with Giorgio's pedal in order to allow the insertion or removal of the rear part of the clip of the shoe as taught or suggested by Bernard.

20. Claims 26-28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

21. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Lubanski (FIG. 4), Battistutta (FIGS. 1-3), and Numata (FIG. 2).


23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Luong

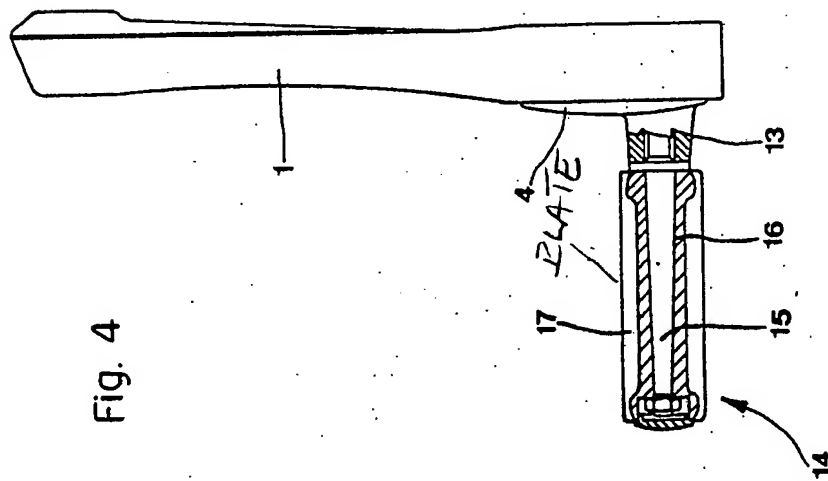
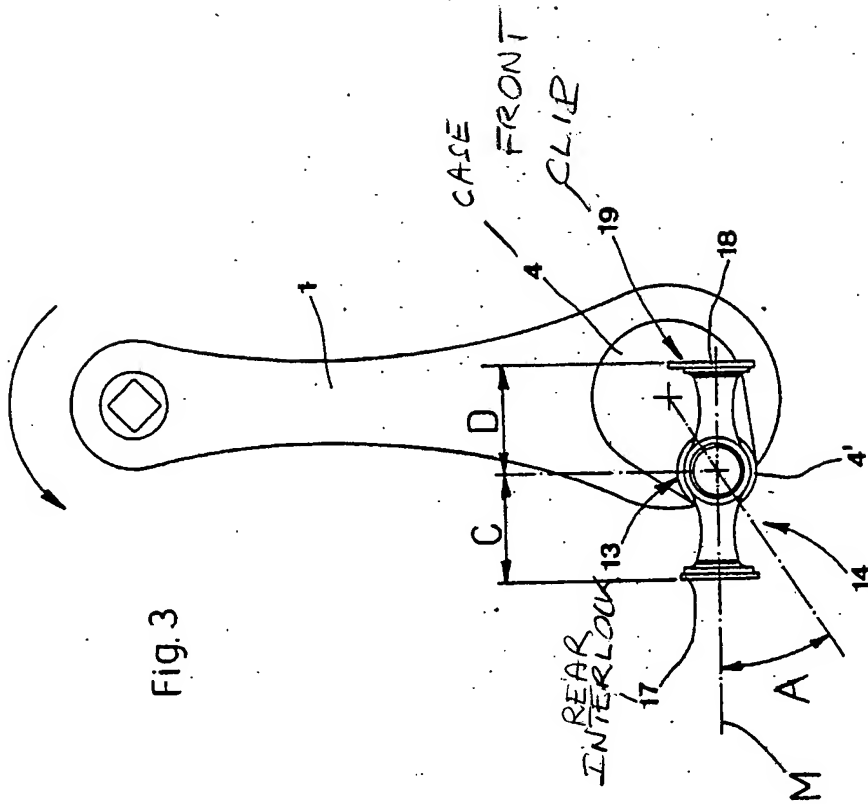
June 4, 2007



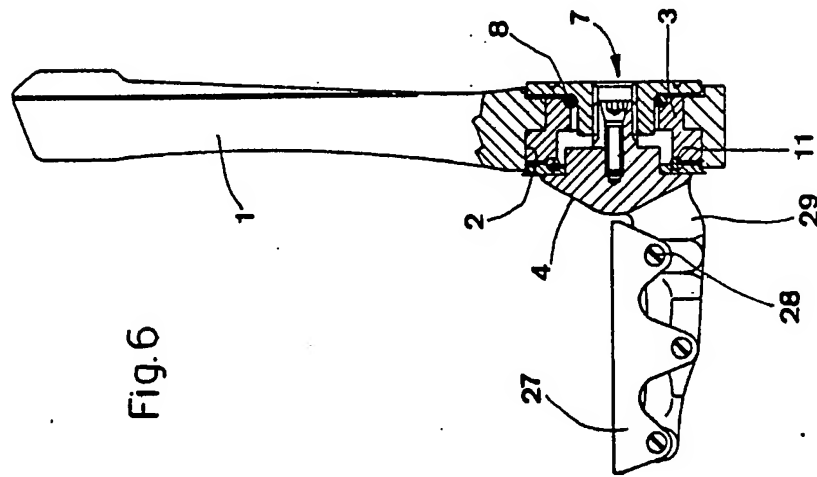
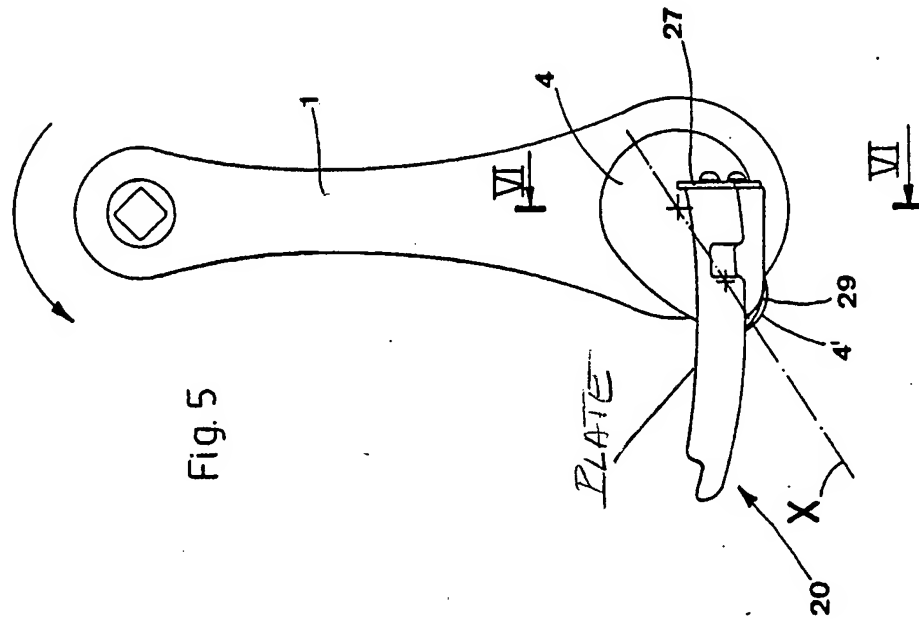
Vinh T. Luong
Primary Examiner

ATTACHMENT

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